

Approved By: Sharon J. Gay
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	\$298,098.32	0	0	0	0
External Revenues	(298,098.32)	<u>(\$543,900)</u>	<u>(\$1,120,300)</u>	<u>(\$1,153,900)</u>	<u>(\$1,782,840)</u>
Program Income (County)	0	0	0	0	0
In-Kind Match County	0	0	0	0	0
NET FISCAL IMPACT	0	<u>(\$543,900)</u>	<u>(\$1,120,300)</u>	<u>(\$1,153,900)</u>	<u>(\$1,782,840)</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0

Budget Account No.: Fund 4000 Dept. 720 Unit 4200 Object/Source 4366
Fund 4011 Dept. 721 Unit W006 Object/Source 6543

Is Item Included in Current Budget? Yes **X** No

Reporting Category **N/A**

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Capital costs will be paid in advance by FP&L. Estimated revenues are based on 1 MGD in 2008, 2 MGD in 2009 & 2001, and 3 MGD in 2011 with annual 3% increases per CPI.

C. Department Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

Handwritten signature: *[Signature]*
 Date: 6-11-07
 OFMB
 Date: 6-7-07
 Date: 6/7/7
 Date: 6/7/7

In J. Forest 6/12/07
Contract Development and Control

B. Legal Sufficiency:

This Contract complies with our contract review requirements.

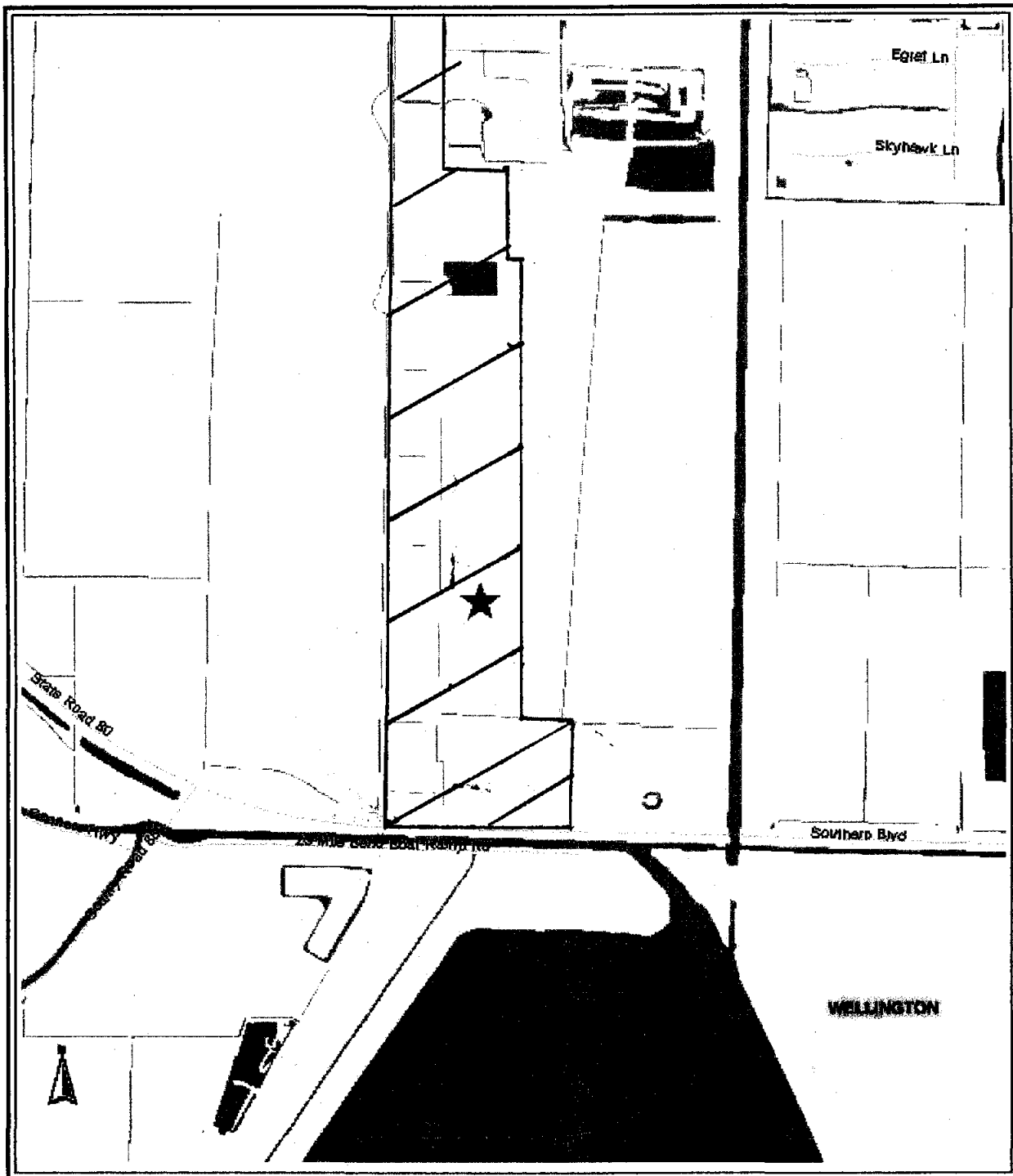
 6/18/07
Assistant County Attorney

At the time of COC's review, this Contract was a draft.

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.



FP&L West County Energy Center

Map Scale 1:26960

Map produced on 5/9/2007

DRAFT

**AGREEMENT BETWEEN PALM BEACH COUNTY AND
FLORIDA POWER & LIGHT COMPANY FOR THE TEMPORARY
PURCHASE OF BULK POTABLE WATER**

THIS AGREEMENT made and entered into this _____ day of _____, 2007, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), and the **FLORIDA POWER & LIGHT COMPANY**, a Florida Corporation (hereinafter "FPL").

W I T N E S S E T H

WHEREAS, FPL wishes to purchase bulk Potable Water from the County for use at its West County Energy Center ("WCEC"); and

WHEREAS, the County wishes to sell FPL bulk Potable Water pursuant to the terms and conditions of this Agreement; and

WHEREAS, to encourage and facilitate conservation of water resources, the parties desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, County and FPL hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. Term. The term of this Agreement shall commence upon execution by both parties and shall continue in full force and effect until July 1, 2014, except for capacity purchased on a permanent basis, which shall continue indefinitely.
3. Effective Date. This Agreement shall become effective upon approval by both parties and completion of the modification of the conditions of certification, pursuant to Section 403.516, F.S., and Section 62-17.211, F.A.C., for WCEC issued by the South Florida Water Management District ("SFWMD"). FPL intends to modify its conditions of certification for WCEC to incorporate this Agreement and to maintain its current water use allocation under its certification. If FPL or SFWMD do not successfully modify WCEC's conditions of certification to incorporate this Agreement, and to allow FPL to keep its current water use allocation from SFWMD under its existing certification, this Agreement shall not become effective. Palm Beach County shall participate in discussions with FPL and SFWMD in order to facilitate the modification of conditions of certification for WCEC.
4. Definitions. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:
 - (a) "Average Daily Flow" – The average daily flow rate of Potable Water collectively measured through all Points of Service. The Average Daily Flow rate is calculated by

dividing the total amount of Potable Water flowing through the Points of Service in any one calendar year by the number of days in that same calendar year;

(b) "Commodity Fee" - A fee to be paid by FPL to County on a monthly basis which is intended to recover County's variable cost of producing and supplying Potable Water to FPL at the various Points of Service. This fee includes any charges necessary for the temporary reservation of capacity in the amounts required under this Agreement. This fee is assessed per one thousand (1,000) gallons of Potable Water delivered by County to the various Points of Service;

(c) "County's Potable Water System" - the system owned and/or operated by the County for the production and distribution of Potable Water to all retail, wholesale, and/or bulk customers of the County, said system being located on the County's side of the various Points of Service and including all Potable Water meters and related appurtenances located at the various Points of Service;

(d) "Peak Instantaneous Flow" - The highest collective rate of Potable Water flow measured at the combined Points of Connection at any moment in time during the Term of this Agreement;

(e) "Point(s) of Service" - The location(s) where the County's Potable Water System is connected with FPL's internal water system, as shown in Exhibit "A", which is incorporated herein and attached hereto. The Potable Water System of County shall include the master water meters and related appurtenances located at the Point(s) of Service, with said master water meters being utilized for the measurement and payment of bulk Potable Water obtained by FPL;

(f) "Potable Water" - Water for human consumption which meets all applicable Federal, state, and County standards;

(g) "Property" - The West County Energy Center ("WCEC") owned and operated by FPL, a site plan of which is attached hereto and incorporated herein as Exhibit "B."

(h) "Service Initiation Date" - the date County begins providing Potable Water to FPL at the Point(s) of Service.

(i) "UPAP" - the Uniform Policies and Procedures Manual of the Palm Beach County Water Utilities Department as may be amended from time to time.

5. Scope of Agreement. County agrees to furnish, and FPL agrees to purchase and accept, a supply of Potable Water in accordance with the terms and conditions of this Agreement. This Agreement encompasses the temporary bulk purchase of Potable Water by FPL for process and miscellaneous use. This includes fire suppression, potable water, and domestic use. County shall furnish, and FPL shall accept, the Potable Water at the Point(s) of Service shown in Exhibit "A". The Potable Water provided under this Agreement shall only be used to provide service to the Property. Provision of the Potable Water by FPL to a user outside

of the Property shall be a default of this Agreement.

6. Sole Provider. County, and/or its successor and assigns, shall have the sole and exclusive right to provide Potable Water and wastewater facilities and services, of any nature, to the Property, for the period of this Agreement. This provision does not preclude FPL from providing water, and wastewater facilities and services, to the Property as outlined in WCEC's Site Certification. In the event of a termination of this Agreement by the County, or any interruption in water service, as outlined in paragraph 18, FPL may immediately seek all other available options for water supply.

7. Water Pressure. The water pressure of Potable Water delivered by the County to the Point(s) of Connection shall be a minimum of 50 psi at all times, with an expected water pressure of between 60 and 65 psi depending upon water demand conditions.

8. Capacity. County shall provide FPL with Potable Water at the varying flow rates, as required by FPL, not to exceed 3.2 million (3,200,000) gallons per day ("MGD"). This capacity shall be temporary in nature, and shall expire on July 1, 2014. At any time and at FPL's option, FPL may convert its temporary capacity reservation to permanent capacity by paying the then existing bulk rate capacity fee for permanent service.

Beginning with the first anniversary date of the Service Initiation Date of this Agreement, and for each successive year thereafter, the County shall determine the Average Daily Flow rate of the preceding year. The Average Daily Flow rate during each year shall not exceed 3.2 million (3,200,000) gallons per day. If such flow is exceeded, FPL shall pay an overage fee of one hundred fifty percent (150%) of the then current Commodity Fee for all such excess use during the previous year.

9. Commodity Fee. The initial monthly Commodity Fee shall be \$ 1.49 per thousand gallons. Beginning on the one (1) year anniversary date of this Agreement, and for each calendar year thereafter, this Commodity Fee shall be adjusted upward by an amount equal to one-half (1/2) of the prior year's (measured October to October) Consumer Price Index, all Urban Consumers, Water and Sewerage Maintenance, published by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI") or some other mutually agreed upon index if the CPI is discontinued, but in no case shall the escalation exceed three (3%) percent annually.

10. Responsibilities of County. County shall provide for the design, construction, operation and maintenance of the County's Potable Water System, up to and including the Point of Service, including the design and construction of any Potable Water meters and related appurtenances. County shall be responsible for the securing of any permits and rights of way, or other approvals, necessary to provide Potable Water to the Property at the Point of Service.

As of the Effective Date of this Agreement, County shall construct a water pipe along State Road 80 (Southern Boulevard) to the L-8 Canal. Within 180 days of the Effective Date of this Agreement, County shall have constructed a water pipe from the L-8 Canal to the Point of Service (hereinafter referred to as "FPL Pipe") A depiction of the FPL

Pipe is shown on "Exhibit A." Within 60 days of the Effective Date of this Agreement, and prior to installation of the FPL Pipe by the County, FPL shall pay the County the amount of (*insert dollar amount*) for the costs associated with the installation of the FPL Pipe. FPL, as outlined in Exhibit C, shall pay for the costs of installing a 12 inch pipe for the FPL Pipe, and the County shall pay any additional costs associated with the installation of a larger pipe. A Report of Costs for the construction of the FPL Pipe is incorporated herein as "Exhibit C."

The County shall establish a bulk meter at the West County Energy Center, as shown in Exhibit "A". The meter shall be in a locked, fenced location, and the County and FPL shall both have access to the meter.

11. Water Quality. The physical, chemical, and biological quality of the Potable Water delivered by County to FPL at the Point(s) of Service shall meet all federal, state, and local laws, regulations, and requirements for Potable Water, as may be amended from time to time. FPL shall be responsible for the water quality of the Potable Water once it enters FPL's internal system.

12. Water Shortages. In the event the South Florida Water Management District or other government unit with just cause and authority declares a water shortage, the County shall have the right to restrict service to FPL only as outlined in SFWMD Rule 40E-21, Water Shortage Plan, Florida Administrative Code, or other applicable provisions existing as of the time of the declaration of the water shortage. Specifically, as currently written, Sections 40E-21.521, and 40E-21.531, F.A.C., require that during Phase I Moderate Water Shortage restrictions and Phase II Severe Water Shortage Restrictions, power production use shall only be reduced voluntarily. Therefore, the County, during Phase I and Phase II SFWMD water shortage restrictions, and based upon the current provisions of Sections 40E-21.521 and 40E-21.531, F.A.C., shall not alter the amount of its water supply to WCEC. For Phase III water restrictions and beyond, the County shall proceed as directed by SFWMD and applicable laws. In the event of a declaration of a water shortage, regardless of class, the County may adjust the Commodity Fee and water pressure, when required by law for essential facilities, in the same manner as rates water pressure are adjusted for customers located within the County limits. The parties agree that these provisions are subject to amendment, and, that both the County and FPL will comply with all applicable provisions in effect at the time of the declaration of the water shortage.

13. Payment of Bills. The County will bill the FPL Commodity Fees every thirty days. FPL agrees to pay for all Potable Water received from the County and make payments to the County within sixty (60) days from the date the bill is rendered by County. A past due notice will be mailed by County to the City after sixty (60) days. If payment has not been received after ninety (90) days from the date of the original bill, service may be disconnected and a one percent (1%) per month interest charge will be assessed on the outstanding balance.

14. County to Maintain Master Meters. County agrees to have an annual inspection and report prepared regarding the condition and accuracy of the master water meters. A copy of the annual report on meter inspection shall be furnished to FPL. FPL shall have the right to

make its own meter inspection, or to have an independent company inspect the metering equipment at any time; provided, however, no such inspection shall be made unless FPL shall first give County written notice of the date and time of its intent to have the inspection made, nor shall any such inspection be made prior to twenty-four (24) hours, excluding Saturdays, Sundays, and holidays, subsequent to the receipt of said notice by County. All costs and expenses of FPL's interim inspection shall be borne by FPL. If the meter is found not to be in good working order, the County shall reimburse FPL the cost incurred as a result of the interim inspection. Normal maintenance of the meter shall be performed by County as an expense of water distribution.

15. Time Period Limitation In Case of Master Meter Inaccuracy. Both parties agree that, should a master meter be found to be inaccurate beyond American Water Works Association (AWWA) standards, the meter will be assumed to have been inaccurate since the time of the event failure or since the last meter inspection or for a period of three months, whichever time should be less, and that the following month's billing will be adjusted to show a credit or additional charge to FPL for that period, based upon the method established in Section 14 herein.

16. Presumed Consumption and Required Payment In Case of Master Meter Inaccuracy. Both parties agree, that if at any time a master meter shall be inaccurate with respect to the quantity of consumption by the FPL, FPL will pay to the County a daily amount equal to the average consumption of the ninety (90) day period prior to the date the meter became inaccurate multiplied by the rate in effect.

17. Security. The parties shall be responsible jointly and severally for security of the Point(s) of Service, including provision of access locking features so that each party can have keyed access to the fenced location. The Point(s) of Service will be controlled by valves which can be operated by authorized representatives of either the County or FPL. Only authorized employees of either County or FPL will operate the valves controlling the Point(s) of Service. The County and FPL shall provide prior notice to each other prior to operating the valves at the Point(s) of Service.

18. Termination. Termination of this Agreement without cause by the either party shall require three hundred and sixty five (365) days written notice to FPL of the termination date. In the event either party defaults on this Agreement, the non-defaulting party shall provide written notice to the defaulting party. The non-defaulting party shall provide the defaulting party thirty (30) days from receipt of the written notice to cure the default, or begin the cure if it will take longer than 30 days, before the non-defaulting party can terminate the Agreement. Notwithstanding the above, if service is interrupted for any reason, FPL may immediately, without notifying the County, seek all other available options for water supply.

The parties may mutually agree to extend the time for cure and/or termination.

19. Force Majeure. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or

availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe or water plant failures and water main breaks, neither party shall be liable for such non-performance.

20. Remedies. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.

21. Successors and Assigns. County and FPL each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither County nor FPL shall assign, sublet, convey, or transfer its interest in this Agreement without prior written consent of the other.

22. Waiver. The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.

23. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

24. Notice. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to FPL, shall be mailed or delivered to FPL at:

FPL West County Energy Center
attn: Plant General Manager
20505 State Road 80
Loxahatchee, FL 33470

and if to County, shall be mailed or delivered at:

Palm Beach County Water Utilities Department
8100 Forest Hill Boulevard
P.O. Box 16097
West Palm Beach, FL 33416-6097.
Attn: Department Director

25. Amendment and Modification. This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.

26. Entirety of Agreement. County and FPL agree that this Agreement and any Exhibits hereto set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superceded or otherwise altered, except by written instrument executed by the parties.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, County and FPL have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Addie L. Greene, Chairperson

(SEAL)

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: _____
Director of Water Utilities

FLORIDA POWER & LIGHT COMPANY

By: _____
Carmine Priore
FPL West County Energy Center
Plant Manager

Signed in the presence of:

Witness

Print Name

Date: _____